MEDICAL OFFICE v. HOE FUNG YOH & ANOR.

[C. A. (Whyatt C.J., Chua & Ambrose JJ.) July 1, 1958]

[Singapore — Civil Appeal No. 2 of 1958]

Landlord and Tenant — Tenancy — Assignment of, by deed of assignment — Admissibility of deed of assignment — "Actual possession" — Meaning of.

In this case the plaintiffs claimed that they were entitled to a declaration that the second defendant had no interest in the premises in question and was a trespasser. The plaintiffs contended that the deed of assignment dated July 8, 1952 was not admissible in evidence as it had not been registered under the Registration of Deeds Ordinance and therefore the second defendant could not rely upon it to establish his title to the premises. To this argument the second defendant replied that it was not necessary to register the deed because by virtue of the provisions of section 25 of the Registration of Deeds Ordinance, the Ordinance does not apply to an assignment of a lease for three years or less "when accompanied by actual possession from the making of such assignment."

Held: (1) the expression "actual possession" does not present any difficulties of interpretation so long it is confined to physical, or as it is sometimes called, *de facto* possession. If, for example, a person has an *animus possidendi* in relation to a particular chattel or piece of land, and exercises actual control or apparent dominion over it, then clearly he is in *de facto* possession of that chattel or piece of land, irrespective of whether he also has the legal right to possess it. Thus a thief is in *de facto* possession of the goods he has stolen and a trespasser is in *de facto* possession of the land which he occupies, notwithstanding that the *jus possidendi* that is, the right to possession, is vested in someone else;

(2) "actual possession" in the sense of physical or *de facto* possession is a question of fact, and therefore the answer to it must depend upon the evidence placed before the Court at the hearing of the suit;

(3) the evidence before the Court clearly established a *prima facie* case that the deed of assignment was accompanied by actual possession from the date on which it was made. The plaintiffs failed to rebut this *prima facie* case. Accordingly the deed was admissible in evidence and defeated the plaintiffs' claim for a declaration that the second defendant had no right or interest in the premises. Judgment of the Court below affirmed.

Cases referred to:—

(1) *Goudge v. Broughton,* (1929) 1 K.B. 129.

(2) *Thomas v. Metropolitan Housing Corpn. Ltd.,* (1936) 1 All E.R. 210.

(3) *Ramsay v. Margarett,* (1894) 2 Q.B. 18.

(4) *Youngs v. Youngs,* (1940) 1 K.B. 760.

COURT OF APPEAL, appeal from the judgment of Wee Chong Jin J.

R. H. Green for the appellants.

R. K. Booker for the respondents.

Cur. Adv. Vult.

Whyatt C.J.: — The question for decision in this appeal falls within narrow limits but in order to understand how it arises, it is necessary to set out the facts in some detail.

In 1942, during the Japanese occupation, the first defendant commenced a restaurant business, known as the Stamford Cafe, at 82 Bras Basah Road and 312 North Bridge Road, the premises being contiguous and so arranged that the restaurant was on the ground floor of 82 Bras Basah Road and the kitchen and storeroom of the restaurant on the ground floor and first floor respectively of 312 North Bridge Road. The first defendant held the premises from the plaintiffs' predecessors in title on an oral monthly tenancy which subsequently was changed to a written monthly tenancy and it is common ground that these premises, of which the plaintiffs are now the landlords, are subject to the provisions of the Control of Rent Ordinance 1953.

From the outset the first defendant was assisted in the management of the restaurant by his wife, who is the second defendant in these proceedings and it would appear that the business grew and prospered over the years for by the year 1952, in addition to the owner and his wife, there were seventeen or eighteen persons employed in it. Unfortunately early in 1952, the enterprise encountered an unexpected hazard — the owner fell in love with the cashier. The result was that he lost interest in the business and told his wife that he wished to go elsewhere; "and so", said the wife in evidence, "I took over the management of the business". Later, in July 1952, according to her testimony, she took over the premises as well, but before this drastic change was made, she and her husband went to see a partner in the plaintiff firm, a Mr. Foo by name, to explain their difficulties to him. Mr. Foo very sensibly advised them to see a lawyer and acting on his advice, they went to see the solicitors who are now acting for the second defendant. These solicitors, at the beginning of July, prepared a deed of assignment, whereby the husband, "in consideration of his natural love and affection for the donee" his wife, assigned to her the monthly tenancy of 82 Bras Basah Road and 312 North Bridge Road and the goodwill and stock-in-trade of the Stamford Cafe.

The deed prepared by the solicitors was signed by the husband and wife on the 8th July 1952 and on the 17th July 1952, the solicitors wrote on behalf of the husband to Mr. Foo, notifying him that the husband had assigned the tenancy of the premises to his wife "to hold under the same terms of you, the landlord" and requesting Mr. Foo, in future, to issue rent receipts in her name. Thus it came about that the wife — to use her own words — "took over the premises in July". She was at that time on the premises every day; moreover she paid the rent for July, and indeed continued to pay the rent month by month right up to August 1955 when the plaintiffs refused to accept any further rent from her on the ground that the tenancy was still vested in her husband.

In December 1955 proceedings were instituted by the plaintiffs against the husband, as the first defendant, and the wife as the second defendant, claiming possession of the premises. Two years later, in November 1957, judgment was entered by default against the husband but the plaintiffs continued the action against the wife, setting out in their pleadings, a number of different grounds on which they claimed to be entitled to a declaration that she had no interest in the premises and was a trespasser. However when the case came on for hearing, the plaintiffs abandoned every ground except one, namely, that the deed of assignment dated the 8th July 1952 was not admissible in evidence as it had not been registered under the Registration of Deeds Ordinance and therefore she could not rely upon it to establish her title to the premises. To this argument, the second defendant replied that it was not necessary to register the deed because by virtue of the provisions of section 25 of the Registration of Deeds Ordinance, the Ordinance does not apply to an assignment of a lease for three years or less "when accompanied by actual possession from the making of such... assignment", and this particular assignment was of a monthly tenancy and had been accompanied by actual possession of the second defendant from the making of the assignment. The plaintiffs challenged this contention only in one respect: they maintained that the husband and not the wife was in actual possession of the premises from the date of the making of the assignment on the 8th July 1952 until the 31st July 1952, and in support of this view, relied strongly on the fact that the deed provided that the goodwill and stock-in-trade of the business should be assigned to the second defendant, not from the date of the signing of the deed, but as from the 31st July. The issue between the parties therefore is whether the husband or the wife was in actual possession of these premises during the period from the 8th July to the 31st July. The point for decision is indeed within a small compass.

The expression "actual possession" does not, in my view, present any great difficulties of interpretation so long as it is confined to physical, or as it is sometimes called, *de facto* possession. If, for example, a person has an *animus possidendi* in relation to a particular chattel or piece of land, and exercises actual control or apparent dominion over it, then clearly he is in *de facto* possession of that chattel or piece of land, irrespective of whether he also has the legal right to possess it. Thus a thief is in *de facto* possession of the goods he has stolen and a trespasser is in *de facto* possession of the land which he occupies, notwithstanding that the *jus possidendi* that is, the right to possession, is vested in someone else. It is only when it is sought to extend the meaning of "actual possession" to include possession through a tenant at will or licensee or to determine which of two persons is in *de facto* possession, by reference to the legal right to possession that difficulties arise. It then becomes necessary to consider how far the *dicta* of Scrutton L.J. in *Goudge v. Broughton*[1] and Slesser L.J. in *Thomas v. Metropolitan Housing Corporation Ltd.*[2] referred to by counsel for the defendant in argument, are in conflict; and to examine such cases as *Ramsay v. Margarett*[3] and *Youngs v. Youngs*[4] mentioned by counsel for the plaintiffs, and to consider how far, if at all, a deed which has not been registered can be admitted for the purpose of proving a legal right to possess before it has been established *aliunde* that it is admissible for that purpose. Fortunately, however, it is not necessary to enter upon a consideration of these matters in this case since in my view the point at issue can be resolved by answering the simple question, was the wife in *de facto* possession of these premises from the 8th July to the 31st July.

"Actual possession" in the sense of physical or *de facto* possession is a question of fact, and therefore the answer to it must depend upon the evidence placed before the Court at the hearing of this suit. In this connexion the first point to be observed is that no oral evidence was called on behalf of the plaintiffs and consequently the

question as to what actually occurred after the 8th July depends upon the oral evidence called by the defence, that is to say, the evidence of the wife, and of an employee of the restaurant. This evidence in my view establishes that throughout July and indeed after that date, the wife was on these premises morning, noon and night, looking after the business, the management of which she had already taken over sometime previously when her husband lost interest in the business and told her he wanted to go elsewhere. Furthermore, she paid the rent of the premises for the month of July out of her own bank account; and as she said in evidence, "I took over the premises in July". In addition, her husband, through his solicitors, informed the plaintiffs in the middle of July that he had assigned the premises to her. All this, in my view, clearly establishes a *prima facie* case that the wife, and not the husband, was in *de facto* possession during July. How then do the plaintiffs seek to rebut this *prima facie* case? Since they called no oral evidence they are constrained to rely upon such admissions as they were able to obtain from the defendant's evidence. This evidence establishes that in accordance with the terms of the deed, the husband remained the owner of the goodwill, chattels and stock-in-trade of the restaurant business until the 31st July but it is clear that the reason for this arrangement was not to enable the husband to exercise any control or dominion over the premises as such, but was merely for convenience of accounting. The evidence shows also that he visited the premises occasionally during July but again it is clear that the reason for the visits was not for the purpose of exercising any control or dominion over the premises as such, but mainly, it would seem, for the purpose of taking money from the till. And furthermore the letter written by his solicitors on the 17th July informing the plaintiffs that he had assigned the tenancy to his wife is quite inconsistent with even an *animus possidendi*, let alone the actual control or apparent dominion over these premises at that time.

In my judgment, the plaintiffs have failed to rebut the *prima facie* case of the defendant and therefore the defendant has established that the deed of assignment was accompanied by actual possession from the date on which it was made. Accordingly the deed is admissible in evidence and defeats the plaintiffs' claim for a declaration that the defendant has no right or interest in these premises. For these reasons I am of the opinion that the judgment of the Court below was right and should be affirmed. The appeal is accordingly dismissed with costs.

Chua J.: — I have had the benefit of reading the judgment of the learned President with which I agree and have nothing to add.

Ambrose J.: — I have had the advantage of reading the judgment of the learned President and I agree with it.

Appeal dismissed.

Solicitors: *Braddell Bros.*; *Allen & Gledhill.*

CHERIAN VARUGHESE v. AMINAH RADIN OSMAN

[A.C.J. (Wee Chong Jin J.) October 18, 1957]

[Singapore — District Court Appeal No. 11 of 1957]

Landlord and Tenant — Notice of demand in writing — Meaning of "reasonableness" — Evidence of — Control of Rent Ordinance (Cap. 242), s.15(1)(a).

The very words of section 15(1)(a) of the Control of Rent Ordinance which requires a "notice of demand in writing" makes it abundantly clear that it was not the intention of the legislature that the word "demand" should be construed to mean a formal demand made in accordance with the strict rules of common law but that the word "demand" should be construed in its popular sense.

The question of what is reasonable is eminently a question of fact for the trial Judge and in an appeal on the question of reasonableness, unless the appellant can show that the trial Judge has misdirected himself, where evidence of reasonableness has been led, by omitting some points of substance or by taking into account something which should not be taken account of, an appellate Court will not disturb the trial Judge's decision. Where the only evidence of reasonableness is irregularity in payment of rent it is material for the trial Judge to consider all the circumstances relating thereto and if he fails to direct his mind to such circumstances, if any exists, he has misdirected himself.

In this case the trial Judge based his finding on the question of reasonableness purely on the fact of irregularity in payment of rent and failed to direct his mind to the facts that led to such irregularity. New trial ordered.

[**Editorial Note:** As to purpose of "demand" see the observations of Murray-Aynsley C.J. in *Leong Man Pan & Anor. v. President, Thong Sow Hong*, (1952) M.L.J. 222 which was followed in *Yee Ah Cheng v. Ko Kam Sai*, Singapore — Dist. Ct. App. No. 16 of 1957 — unreported.]